

)	
)	
In Re)	
)	
Petition to Remove Morse Code)	
Requirements from the Amateur)	RM-10783
Radio Regulations)	
)	
)	

COMES NOW the petitioner and respectfully offers unto the Commission the following
reply comments.

But I won't do that.

I would like to point out to one commenter, however, who said that I must have gotten my callsign in the early 1950s, that I'm not quite that old. The Commission issued the callsign

to me in the B.V. era (Before Vanity) and I was the first person it was issued to. But I'm still not that old. I got the callsign in 1970 when I came back from Vietnam.

2. The Commission has before it one, and only one, issue in this petition for rule making. Should the Commission continue to use knowledge of Morse code as a criterion to determine which hams are allowed to use the high frequency bands? To put the matter more bluntly and in a way that the commenters seem unwilling to discuss: Should the Commission continue to use a licensing criterion that discriminates against handicapped people? The answer to that question must be no.

There is simply no doubt that the Morse code requirement discriminates against handicapped people. Some commenters waved the magic wand of Handi-HAMS over their comments and pronounced that Morse code does not discriminate. The Commission, however, is not fooled by such sleight-of-hand. It was not fooled when it provided an exemption from the thirteen and twenty word per minute Morse code requirements and I cannot believe that it is fooled now. The Commission knows full well that the Morse code requirement is discriminatory. It has its own information and data and it's own justification and reasons

3. When the Commission did away with the twenty and thirteen word per minute Morse code requirements, it pointed out that it could not drop the five word per minute requirement because of international agreements. We all learned in law school that treaties have the force and effect of the Constitution, but we've learned from the newspapers recently that they can be readily repudiated. I believe that when the Commission eliminated the higher speed Morse code requirements it could have done away with the requirements

entirely and that it can do away with them now, regardless of whether the U.S. Senate has ratified the treaty changes. I'll explain.

4. The U.S. Supreme Court has never taken an absolutely hard line in dealing with constitutional issues. Particularly when rights and responsibilities collide, the Court takes a balancing approach. It has been some years since I've practiced law and I'm not quite up on the current approach that the Court takes. Case names pop into my head, though, names like *Marsh v. Alabama*. In that case the Court balanced free speech rights of a Jehovah's Witness against private property rights and came down on the side of free speech. In the *Korematsu v. United States* the Court balanced the rights of natural-born American citizens against the unreasoning fear of the rest of the population and came down on the side of internment camps. In the cases that resulted from the Civil Rights Act of 1964 (Ollie's Barbecue, Heart of Atlanta Hotel?) the Court balanced the private property rights of American citizens against the need of our society to end a type of discrimination and found a way to do it with the Interstate Commerce Clause of the U.S. Constitution.

5. In like manner, I believe that the Commission should balance the rights of American citizens against a requirement in a decades-old treaty. The radio treaties that require Morse code knowledge were entered into at a time when handicapped people were considered by many to be unfit for our society. They were shunted aside and in some cases even put into asylums. As a society, we no longer believe that should happen. My friend Candace, who teaches fifth grade in Pecos, tells me that handicapped students are brought into class with the rest of the students for at least part of the day. Mainstreaming, as it is called, was not done when I was in school; it is inconceivable that handicapped access or mainstreaming was considered when the radio treaties were ratified. In the United States today, we believe

that handicapped people have a *right* to full access to our society. Handicapped people have the right to receive *all* the benefits of our society. As a society we have no right to restrict that access.

It is certainly true that there are some things that handicapped people can't and probably shouldn't do. Many of them probably can't get driver's licenses, but then my mother, who isn't handicapped and is over eighty, shouldn't have a driver's license either. On the other hand, my friend Doug cruises around Santa Fe in his electric wheelchair and does quite well at it. Yes, there are certain things that handicapped—and many able people!—shouldn't do, *but ham radio is not one of them*. As Leonard H. Anderson correctly pointed out in his reply comments, ham radio is an avocation. For God's sake, we're not talking about national security here, we're talking about a *hobby*!

The treaty requirement for Morse code is absolutely insignificant when balanced against the rights and needs of American citizens to have access to *all* the ham radio bands. Some may say that handicapped people can have access to the bands above 30 megahertz so their access to ham radio is not limited. Indeed, these people might say, that handicapped people can operate on the high frequency bands with other licensed hams or at events like Field Day. This is akin to limiting ham radio to white males and saying that African Americans and women can operate when there's a white man around. As teachers know, our society's policy is mainstreaming. Handicapped people are entitled to the full benefits of our society without regard to some decades-old treaty. I firmly believe that the Supreme Court would decide in favor of handicapped people, particularly because the American people—through the American's with Disabilities Act—have expressed their determination that handicapped people receive the full benefits of our society.

6. There are a few minor points to end with. The Commission cannot base its decision on what the “ham radio community wants.” The Commission cannot know what hams want. RM-10783 garnered 256 comments—some duplicates—from a ham radio community of over 680,000. The Commission cannot rely on national organizations. The 2002 annual report for the American Radio Relay League stated that the League has 157,000 members—less than twenty-five percent of the ham radio community. The respondents to the survey submitted by CQ Communications tend to be old, tend to be licensed for a long time, and tend to be Extra Class licensees. The largest single group of hams—thirty-eight percent—are Technician licensees who have not passed a code test.

7. 47 CFR 1.412 c states that “rule changes may in addition be adopted without prior notice in any situation in which the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The finding of good cause and a statement of the basis for that finding are in such situations published with the rule changes.” The continued use of a discriminatory criterion for access to the high frequency ham radio bands is certainly contrary to the public interest. There is no reason to continue the discrimination against handicapped people, regardless of any statements to the contrary. Handicapped people have a right of full access to the ham bands, just like able people. There is nothing important about ham radio—it is a hobby. Handicapped people have a right of access to the hobby just like everyone else.

8. As I stated before, the only issue before the Commission in RM-10783 is discrimination against handicapped people. There is no other issue. None of the arguments for or against the Morse code requirement is significant when compared with the issue of discrimination.

I urge the Commission to immediately—without going through a rulemaking proceeding—remove the Morse code requirements by administrative action from its regulations.

9. Finally, I must point out that Morse code will certainly continue to be used well into the future, regardless of any action that the Commission takes in this matter. In the movie *Star Trek IV: The Voyage Home*, Morse code is heard in one scene—you Trekkies need to find it. It is inconceivable that Gene Roddenberry, who strove for accuracy in his productions, would have allowed Morse code to be used in the movie unless he had information that it would continue to be used well into the Twenty-third Century. It is clear, for example, that when Lieutenant Uhura has that little thing plugged into her ear she is listening to some sort of code—Morse, perhaps?—and translating it for Captain Kirk, and the rest of us, too. Spock, of course, is capable of understanding higher speed data transmissions, perhaps AMTOR or packet, when he uses the earpiece.

The foregoing paragraph is no more ludicrous as an explanation that Morse code will be used in the Twenty-third Century than the current explanations for why Morse is an essential communication mode in the Twenty-first. The information regarding the necessity of Morse code and its usefulness in emergency communications is nothing more than anecdotal “evidence,” and no more helpful than science fiction. And the Commission has heard it all before.

In the years before 1910, Reginald Aubrey Fessenden understood the fundamental difficulty with Morse code—that it requires a trained operator. To that end, Mr. Fessenden pioneered the use of voice communications. He was the first to broadcast voice and music over long distances. He even invented tone signaling devices that worked very much like

Motorola's Private Line. (unpublished master's thesis by Michael Everette, WA4DLF)

According to the Encyclopedia Britannica, Fessenden

directed Ernst Alexanderson of the General Electric Company in building a 50,000-hertz alternator that made possible the realization of radiotelephony, and Fessenden at once built a transmitting station at Brant Rock, Mass. On Dec. 24, 1906, wireless operators as far away as Norfolk, Va., were startled to hear speech and music from Brant Rock through their own receivers.

Unfortunately, everyone ran off behind Marconi and radiotelegraphy, while Fessenden was largely forgotten.

But even before World War I the public did not communicate by Morse code, the public used telephones. As soon as teleprinters became available Morse disappeared from communication circuits as quickly as the teleprinters could be installed. Morse code has continued in remnant uses, primarily in ham radio. Other uses include the message signaling tone on my Nokia cell phone, indentifiers for VHF Omnirange transmitters, and its use as the basis of the theme song for the Carlton TV production of *Inspector Morse*. But no one really expects anyone to *understand* Morse code. Most people believe that their cell phone is beeping SOS when it's really beeping SMS. The Federal Aviation Administration puts the dots and dashes on the map. And Barrington Felong was writing music and using the cadence of the letters M-O-R-S-E, not sending Morse code. Although some people believe he may have been telegraphing the name of murderer. And we know from *Star Trek IV: The Voyage Home* that remnant uses of Morse code will continue into the Twenty-third Century.

10. Should the commission wait for considered reflection on the matter? No!

Discrimination is *wrong*.

Thank you.

Respectfully submitted,

QuickTime™ and a
Planar RGB decompressor
are needed to see this picture.

Kiernan K. Holliday